

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CHRISTIAN HEALTHCARE CENTERS, INC.,

Plaintiff,

No. No. 1:22-cv-00787

v

HON. JANE M. BECKERING

DANA NESSEL, in her official  
capacity Attorney General of Michigan, JOHN  
E. JOHNSON, JR., in his official capacity as  
Executive Director of the Michigan  
Department of Civil Rights, PORTIA L.  
ROBERSON, ZENNA FARAJ ELHASON,  
GLORIA E. LARA, RICHARD CORRIVEAU,  
DAVID WORTHAMS and LUKE LONDO, in  
their official capacities as members of the  
Michigan Civil Rights Commission,

MAG. PHILLIP J. GREEN

**DEFENDANTS' RESPONSE  
TO PLAINTIFFS' JULY 25,  
2023 NOTICE OF  
SUPPLEMENTAL  
AUTHORITY**

Defendants.

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**DEFENDANTS' RESPONSE TO PLAINTIFFS' JULY 25, 2023 NOTICE OF  
SUPPLEMENTAL AUTHORITY**

Defendants submit this response to Plaintiffs' Notice of Supplemental Authority regarding *Block v. Canepa*, 2023 U.S. LEXIS 17946 (6th Cir., July 14, 2023). (ECF No. 43, PageID.1171-1175.) Defendants incorporate their prior procedural objections raised in response to Defendants' previous Notice of Supplemental Authority. (ECF Nos. 40.)

*Block* involves a pre-enforcement constitutional challenge regarding Ohio's Transportation Limit statute, which prohibits individuals from transporting various types of alcohol, including wine, in excess of the prescribed statutory limits from another state. *Id.* at \*5. The statute in *Block* specifically proscribed the conduct that plaintiff wanted to engage in where he wanted to transport more wine into Ohio than permitted. *Id.*

Plaintiffs argue that, like the Plaintiffs in *Block*, they have demonstrated that Defendants prosecute the statutes at issue by purportedly showing "Michigan does prosecute ELCRA violations *generally*." (emphasis added) (ECF No. 43, PageID.1173). Such a contention ignores the requirement that a plaintiff "must

plead facts sufficient to establish a ‘reasonable’ fear of prosecution,” which can be demonstrated through “past enforcement against the *same conduct*”—not just past enforcement of a statute generally. *Block* at \*13, citing *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014). (Emphasis added). *Block* involves a statute that proscribed the very specific conduct plaintiff wished to engage in, and the state had a past history of enforcement of that statute for the same, specific conduct. In *Block* there was evidence of past enforcement of transporting other types of alcohol (bourbon and liquor) when plaintiff wanted to transport wine; however, the statute specifically contained a transportation limit for wine. This is not comparable to the facts of this case where Plaintiffs argue any enforcement of the ELCRA based on any protected category provides them with standing despite a lack of evidence of past enforcement against a religious entity for the conduct they wish to engage in and despite the fact that the ELCRA requires consideration of other laws.

Further, Plaintiffs’ claim that *Block* requires governmental disavowal to neutralize the threat of enforcements is inaccurate. (ECF No. 43, PageID.1174.) While the court in *Block* found that the Ohio defendants “have not indicated that they, as a matter of policy, choose not to prosecute people engaging in Miller’s desired conduct,” they did not rule it was a requirement. *Block*, at \*18.

Simply, *Block* has little to no bearing on this suit, as it does not resolve Plaintiffs' standing issues.

Respectfully submitted,

s/*Kimberly K. Pendrick*

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Dated: August 3, 2023

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 3, 2023, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

s/*Kimberly K. Pendrick*

Kimberly K. Pendrick (P60348)

Assistant Attorney General